

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Frank Samaniego,
Petitioner,
v.
Charles L. Ryan, et al.,
Respondents.)) No. CV 11-00426-PHX-NVW (ECV)
ORDER

Before the Court is the Amended Report and Recommendation (“R&R”) of Magistrate Judge Voss (Doc. 16) regarding Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 7 (citing 28 U.S.C. § 636(b)(1))). On January 25, 2012, Petitioner filed an objection to the R&R (Doc. 19) and a motion requesting a certificate of appealability (Doc. 20).

The Court has considered the Petitioner’s objections and reviewed the Report and Recommendation de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). The Court agrees with the Magistrate Judge’s determinations, accepts the recommended decision within the meaning of Fed. R. Civ. P. 72(b), and overrules Petitioner’s objections. *See* 28 U.S.C. § 636(b)(1).

1 (stating that the district court “may accept, reject, or modify, in whole or in part, the findings
2 or recommendations made by the magistrate”).

3 IT IS THEREFORE ORDERED that the Amended Report and Recommendation of
4 the Magistrate Judge (Doc. 16) is accepted.

5 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying and
6 dismissing Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254
7 (Doc. 1) with prejudice. The Clerk shall terminate this action.

8 Having considered the issuance of a Certificate of Appealability from the order
9 denying Petitioner’s Petition for a Writ of Habeas Corpus, the Court finds that the Petition
10 is justified by a plain procedural bar and jurists of reason would not find the procedural
11 ruling debatable. Accordingly, Certificate of Appealability and leave to proceed *in forma
pauperis* on appeal will be denied.
13

14 IT IS THEREFORE ORDERED that Petitioner’s Request for Certificate of
15 Appealability (Doc. 20) is denied.

16 DATED this 27th day of January, 2012.

17
18 
19 Neil V. Wake
United States District Judge
20
21
22
23
24
25
26
27
28